

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456

Civil Action No. 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:
International Union of Operating Engineers,
Local No. 68 Welfare Fund v. AstraZeneca PLC
Et al. Civil Action No. 04-11503-PBS

Hon. Patti B. Saris

MOTION TO QUASH

Defendant, Stanley C. Hopkins, moves this court to quash Co-Defendant AstraZeneca's First Request for Production of Documents, as well as its Notice of Subpoena ad Testificandum and Duces Tecum for Dr. Hopkins' undersigned counsel.¹ In the event this Court requires oral argument in this matter, Dr. Hopkins requests that he be allowed to appear by telephone, as this litigation and its predecessor litigation has already caused him tremendous economic hardship.

Memorandum of Law

Defendant AstraZeneca has served Dr. Hopkins with a Request for Production of Documents (Request), and has served counsel for Dr. Hopkins with a Notice of Subpoena ad Testificandum and Duces Tecum (Deposition). Put simply, the Request seeks documents reflecting settlement discussions between New Jersey class action counsel (Donald Havilland) and counsel for Dr. Hopkins (the undersigned). The subpoena for the deposition of Dr. Hopkins' counsel seeks essentially the same information. Based upon discussions between the undersigned and counsel for AstraZeneca, the document request and depositions are designed to establish that Dr. Hopkins was fraudulently joined as a defendant in a New Jersey Superior Court action (which was removed from the New Jersey state court to New Jersey federal court and then transferred to this MDL Court).

¹ The undersigned has not been admitted *pro hac vice* in this litigation, but understands this Court has entered an order permitting all counsel hailed involuntarily into this MDL to appear *pro hac vice*.

Both the Request, as well as the Deposition, should be quashed. First, the Request as well as the Deposition seek to have counsel produce evidence of settlement communications with Plaintiffs' counsel. To the extent such communications occurred, they are protected by Fed. R. Evid. 408 (Compromise and Offers to Compromise). Moreover, the Deposition seeks to inquire into why the undersigned declined to consent to removal. This will necessarily require disclosure of attorney thought processes and mental impressions (work product privilege) and conversations between Dr. Hopkins and his counsel (attorney client privilege).²

To the extent counsel for AstraZeneca seeks to elicit information concerning when Dr. Hopkins was served, that information is clearly set forth in Dr. Hopkins's Joinder in Plaintiffs' Motion for Remand (Exhibit 1). The facts relevant to that inquiry are as follows: Counsel for Dr. Hopkins had agreed to accept service of the New Jersey Class Action Complaint on July 3, 2003. Counsel for Dr. Hopkins did not consent to removal to federal district court on that date or any other date. The only notes in counsel's possession reflecting any conversation with counsel for AstraZeneca are notes of a telephone conversation with Eric Gill of Davis Polk, dated July 3, 2003, the date the undersigned agreed to accept service. Those notes are sketchy, but reflect that Mr. Gill informed the undersigned that the New Jersey State Court lawsuit in which Dr. Hopkins had been named was part of a larger MDL in Boston (this case), that AstraZeneca was involved in ongoing settlement negotiations with Plaintiffs in the MDL, and asking the undersigned whether Dr. Hopkins had properly been served. Those notes reflect no discussion whatsoever concerning removal or the consent for the same. Although undersigned has no independent recollection of that July 3, 2003, conversation, undersigned counsel does know neither Dr. Hopkins nor the undersigned ever consented to removal to federal court.

Conclusion

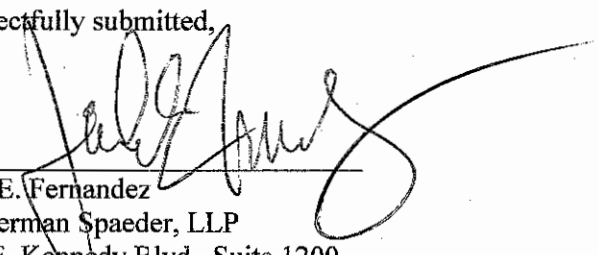
² If AstraZeneca contends Dr. Hopkins was joined by the Plaintiffs for the purpose of defeating the federal court's diversity jurisdiction, the Court should be aware that Dr. Hopkins is a Florida resident who was named in a New Jersey state court action by New Jersey plaintiffs. If anything, Dr. Hopkins created a diversity problem for the New Jersey plaintiffs.

Dr. Hopkins' association with AstraZeneca has presented severe financial hardship to Dr. Hopkins. Dr. Hopkins has already been deposed in this case. The current document request and subpoena are not only irrelevant, they seek privileged information. Moreover, any information relevant to AstraZeneca's opposition to remand is set forth in this motion to Quash and in Exhibit 1. Requiring counsel for Dr. Hopkins to attend a deposition simply to repeat those facts is an unnecessary and abusive waste of resources. The Motion to Quash should be granted.

Dr. Hopkins requests any necessary hearing on this issue be conducted telephonically.

Dated: September 27, 2005

Respectfully submitted,



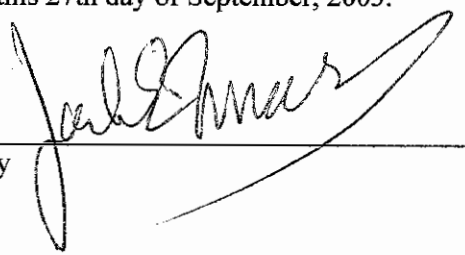
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CERTIFICATE OF SERVICE

I hereby certify that a complete and accurate copy of the foregoing has been furnished by U.S.

Mail to all counsel of record on the attached counsel list this 27th day of September, 2005.



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